

Analisa Journal of Social Science and Religion

Website Journal : <http://blasemarang.kemenag.go.id/journal/index.php/analisa><https://doi.org/10.18784/analisa.v3i02.662>

MARRIAGE PROBLEMS OF INDONESIAN CITIZENS LIVING IN THE NETHERLANDS UNDER THE PERSPECTIVE OF MARRIAGE LAW

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Paper received: 27 August 2018

Paper revised: 6 – 12 December 2018

Paper approved: 26 December 2018

ABSTRACT

The present study described the process and the problems of marriage registration for Indonesian citizens who live in the Netherlands. Through qualitative approach, the study found that the marriage for Indonesian brides and grooms who are Muslim in Den Haag had been recorded by the Embassy of the Republic of Indonesia in the country. The process of delivering marriage service in the Embassy had been simple and easy if the bride and grooms were able to provide the marriage requirements. On the other hand, mixed-marriages were unable to be recorded in the Embassy; however, these mixed-marriages might be recorded in Gemeente or the office of local authority on the country. In addition, the present study also found that several Indonesian citizens in the Netherlands had decided to opt for sirri marriage or religion-based marriage and thus they did not record their marriage in either the Embassy or the Gemeente. The sirri marriage had been selected because the brides and the grooms did not have valid administrative requirements. These brides and grooms usually registered themselves as life partners. Socially, sirri marriage did not have negative impacts because the partners still had social security provided by the government; as a result, civil, social, and economic rights had not been limited. Furthermore, the present study found that the spouses of mixed-marriages in the Netherlands encountered conflict of laws in which the Marriage Law admitted the law of the state in which the marriage had been held but also urged the single-faith marriage. On that basis, the present study would like to recommend reconstruction of marriage law in Indonesia, by recognizing the marriage record that has been legally carried out in other country.

Keywords: *Mixed Marriage, Conflict of Laws, Marriage Law, lex loci celebrations.*

INTRODUCTION

Based on Law Number 1 Year 1974 Regarding on Marriage Law, the requirement of a valid marriage is that the marriage should be based on religion and held on the local institution of marriage registration. Although the law has been implemented for a long time (since 1974), in the practice there are still many spouses who hold their marriage without any registration. Through valid marriage registration, legal certainty as well as civil and administrative rights such as ID Card, family card, birth certificate, passport, and alike might be attained. On the other hand, the spouses who do not register their marriage will encounter

many problems especially for the wife and the children (Kustini (ed)., 2013: 121-122).

Based on these results, it is apparent that marriage registration is very important for Indonesian people who would like to get married both inside and outside the jurisdiction of the Republic of Indonesia. It is especially for the Indonesian citizens who live outside the state, marriage registration becomes more important since, in addition to the detrimental impacts that have been mentioned in the previous section, the children from unregistered marriage abroad might be stateless. The status of being stateless might lead to other impacts such as inability to

attain education right and other civil rights.

Many people, including Indonesian citizens, have decided to work abroad. Most of Indonesian workers are capable to fill the segment of low-level employment and the employment might be in the informal sector such as household assistant, construction worker, and plantation workers (Sutaat et al., 2008). Sending Indonesian workers abroad is also a policy that the Indonesian government has implemented in order to empower the Indonesian workers. In general, the interests of Indonesian workers to work abroad are influenced by the domestic factors such as increasing economic growth, highly limited employment, insufficient source of income, and lack of employment channel.

Until 2018, there has not been accurate number of Indonesian citizens who stay abroad. However, it might be ensured that the number of Indonesian citizens who stay abroad has been increasing especially the citizens who stay abroad for employment. The working Indonesian citizens tend to be migrant workers in the formal and informal sectors. It is predicted that until 2014 the number of Indonesian migrant workers has been approached 6.3 million people spread around 28 countries of destination in three continents namely Asia-Pacific (61.78%), Middle-East and Africa (37.08%), and Europe and American (1.14%). The migrant workers that have been registered come from almost all of the islands in Indonesia namely Java-Madura-Bali, West and East Nusa Tenggara, Sumatera, Borneo, and Celebes (Centre of Research and Development, Ministry of Social Affairs, 2015: iii). On the other hand, the Ministry of Foreign Affairs has predicted that the number of these migrant workers reached 12 million people (Exposition of the Ministry of Foreign People in the Centre of Research and Development, the Ministry of Religion Affairs, March 2017).

In addition to bringing about positive impacts, the practice of sending Indonesian workers abroad also bring about negative impacts that span from pre-departure, placement, and post-

placement/return into the Republic of Indonesia. From numerous records in 2014, it is found that 16.86% from the number of abroad Indonesian workers suffer from several problems: disease, unilateral termination of employment, troubling employers, unpaid salary, sexual harassment, violation of employment agreement, job accident, pregnancy, abuse, forced return, immigration problems (incomplete documents, overstay), death sentence, and even death (Centre of Research and Development, Ministry of Social Affairs, 2015, iii).

Another problem that Indonesian workers should encounter is the difficulty to attain marriage registration i.e., many Indonesian workers who commit marriage under the hands (marriage without the official registration) whereas marriage is part of fundamental needs for every citizen. Therefore, the provision of marriage registration service for Indonesian citizens, both who stay domestic and abroad, is very important to provide. However, it is unfortunate that in the practice many Indonesian citizens who stay abroad tend not to register their marriage.

Committing marriage to build family and to attain offspring is the right of everyone. Article 28 B, verse (1) of 1945 Constitution declares that every individual holds the right to establish family and continue their offspring through legal marriage. Furthermore, in Law Number 39 Year 1999 on Human Rights, Article 10 declared that marriage is one of the fundamental rights that human beings should attain. Marriage may not be forced since marriage may only be committed through the free will of the bride and the groom and marriage should be in accordance to the government legislation (Kementerian Dalam Negeri, 1999).

In order to ensure the provision of marriage registration for the Indonesian citizens staying abroad, Joint Decree from the Minister of Religious Affairs and the Minister of Foreign Affairs Number 589 Year 1999 and Number 182/OT/X/99/01 Year 1999 regarding the Instruction of Marriage Registration for the Indonesian

Citizens who Stay Abroad has been issued. In the implementation, the Ministry of Religious Affairs for the Republic of Indonesia has issued the Regulation Number 463 Year 2000 regarding Delegation of Authority on Appointment of Marriage Registration Officer on foreign country has been issued. The Regulation gives authority for the Head of Representative Assembly on the foreign country to appoint the Marriage Registration Officer from the domain which is in charge of consular matters (Kementerian Agama, 2000).

The Netherlands becomes one of the popular destinations for most of Indonesian citizens. Many Indonesian citizens come to the Netherlands for work or study in the universities based on the data from the Central Bureau of Statistics for the Netherlands (Soraya, 2016). Although Marriage Registration Officer has been assigned in the Netherlands, it is a difficult matter for Indonesian citizens to register their marriage whereas marriage registration is part of their civil rights. Not to mention, it is apparent that marriage registration has not been given attention and solution from the representative office of Indonesian authority on the foreign country. This case is different than the case of national election (legislative election or presidential election); for the case of national election, the representative office of Indonesian authority will be pro-active in socializing the national election through drop box. Similarly, in the case of passport settlement for Indonesian workers the representative office of Indonesian authority will reach out the Indonesian workers by visiting the enclaves where these workers have been staying (Soraya, 2016).

Central Bureau of Statistics for Netherlands (*Centraal Bureau van Statistiek*) in 2015 has registered 12,016 Indonesian citizens who were asking for residence permit in the country; the number has not included the undocumented Indonesian citizens. Therefore, it is important to study the problems of marriage registration for the Indonesian citizens who have been living in the Netherlands (Kementerian Dalam Negeri,

2016).

From the above elaboration, there are three problems that might be formulated. The first problem is: What is the role of the representative office of Indonesian authority in the process of registering the marriage of Indonesian citizens in the Netherlands? The second problem is: What are the problems that the Indonesian citizens encounter in registering their marriage in the Netherlands? Next, the third problem is: What will be the implications on the civil rights of the Indonesian citizens if the Indonesian citizens do not register their marriage? In relation to these problems, the objectives of the present study are to describe the role of the representative office of Indonesian authority in the process of registering the marriage of Indonesian citizens in the Netherlands, to describe the problems that the Indonesian citizens encounter in registering their marriage in the Netherlands, and to describe the implications on the civil rights of the Indonesian citizens if the Indonesian citizens do not register their marriage.

The study is necessary in order to observe the process of marriage registration, the supporting and inhibiting factors within the marriage registration, and the implication for the spouses or the families who do not wish to register the marriage. The results of the study are necessary for providing input of policies about the efforts that the Indonesian authority should pursue, especially for the Ministry of Religious Affairs for the Republic of Indonesia in registering the marriages of the Indonesian citizens who have been living abroad.

Literature Review

Study on marriage problems among Indonesian citizens living abroad, especially among Indonesian citizens who stay in the Netherlands, has not been much discussed. With regards to the topic, one of several studies that share similarities to the present study is a study about marriage migration by Mudzakkir (2016). His study has discussed the discourse and the experience of mixed-marriage among Indonesian

women in the Netherlands. Mudzakkir (2016) found that at least there had been three arenas that established the practice of mixed-marriage namely colonial/postcolonial discourse, marriage law, and migration policy. The study by Mudzakkir underlined the importance of behavioural aspects within the marriage migration that influenced the different experience in each individual within the practice (Mudzakkir, 2016: 13).

Another study was conducted by Abadi (2007). His writing was about cross marriage in Sumenep. From the study, he found that there had been cross marriage among Chinese, Arabian, Indian, Javanese, and Madurese community in Sumenep. The cross marriage in a long-term mixture had resulted in a multicultural society. Furthermore, the culture of Sumenep had appeared with peculiar characteristics in terms of cultural entity. The elements of Sumenep/Madura culture were still apparent but these elements had developed beyond the original cultural entity of Sumenep/Madura.

Next, a study done by Basarah (2014) criticized Marriage Law Article 2 Paragraph 1. Through the study, Basarah concluded that Marriage Law had been a new legal product and had been the amendment on the Code of Civil Law, which also regulated marriage, several matters that might be conflicting would arise and the conflict might be found, for example, on the concept of marriage in the Code of Civil Law that acknowledge societal division, on the principle of *Bhinneka Tunggal Ika* (Unity in Diversity) that had been the consideration within the Marriage Law, on the definition of discrimination as having been formulated in Law Number 39 Year 1999 regarding Human Rights, and on the concept of Human Rights. The study by Basarah prioritized more on the aspects of human rights rather than the aspects of Marriage Law (Basarah, 2014: 205).

A study conducted by Latumahina was conducted toward the civil relationship between extra-marriage children and their parents; the study was a comparative study on familial law in the Netherlands. The results of his study showed

that the regulation on the civil relationship between extra-marriage children and their parents in the Netherlands had provided better legal protection and legal certainty for the extra-marriage children in comparison to the Indonesian law system. The study by Latumahina at least might be much related to the present study and might serve as meaningful matter of reference (Latumahina, 2018: 182).

Another study on mixed-marriage that might be relevant to the present study is a study done by Triadi et al. (2016: 1). In their study, it was found that Law Number 12 Year 2006 regarding Indonesian Citizenship provides assurance of citizenship status for the women who have been involved and the children who have come from mixed-marriages. Based on the law, it is stated that Indonesian women are given opportunity to hold their citizenship status and their children who come from the mixed-marriage will have the rights to attain their citizenship status. The study by Triadi et al. (2016) theoretically supports the present study; however, the aspects that have been discussed in their study are more on the marriage law rather than the case of mixed-marriages that have been committed on the foreign country.

The studies on such issue that have been previously discussed might serve as the starting point in investigating the process and the problems of mixed-marriage registration that Indonesian citizens commit in the Netherlands. The topic in the present study will be a differentiator between the present study and the previous studies. In addition, the present study might provide suggestions for the Indonesian government in protecting the Indonesian citizens in relation to the mixed-marriages both the single faith-based ones and the double faith-based ones that involve different citizenship status.

THEORETICAL FRAMEWORK

Marriage Registration in the Foreign Country

Marriage is a spiritual bond between husband and wife in establishing a happy and everlasting

family based on the principle that God is the One and only Supreme Being (Marriage Law Number 1 Year 1974). A marriage is held accountable if the marriage is committed under the law of each religion and faith and is registered based on the governing legislation. In order to protect the spouses who have committed their marriage, in Article 2 paragraph (2) of Law Number 1 Year 1974 regarding Marriage it is stated that every marriage should be registered according to the requirements of the governing regulation. Based on the law, every marriage should be registered.

Marriage that Indonesian citizens commit on the foreign country might be acknowledged as an official marriage if the marriage has been registered to the local registration institution and has been provided with marriage. The requirement has been stated in Article 56 Paragraph (1) of Law Number 1 Year 1975 regarding Marriage. In this article, it is mentioned that the marriage that is committed on the foreign country will be considered legal if: (1) the marriage has been committed according to the governing legal requirement on the foreign country where the marriage takes place; and 2) the Indonesian citizens who commit the marriage on the foreign country do not violate the legal requirements that have been stated in the Marriage Law (Departemen Agama, 1975).

Based on the Marriage Law, the marriage that has been committed on the foreign country should meet the legal requirements of the Republic of Indonesia in addition to the legal requirements of the governing authority in the foreign land (Departemen Agama, 1974). Therefore, it is very possible that the formally legal marriage on the foreign country may be considered illegal before the Indonesian legal system (please consult Article 2 of Marriage Law).

The marriage registration for the fellow Muslim people has been arranged in the Joint Decree of the Minister of Religion Affairs and the Minister of Foreign Affairs Number 589 Year 1999 and Number 182/OT/X/99/01 Year 1991 regarding Technical Instructions of Indonesian Citizens Marriage on the Foreign Country. The

decision in the Joint Decree has been supported as well by the issuance of the Minister of Religion Affairs Decree Number 463 Year 2000 regarding the Delegation of Authority on the Appointment of Marriage Registration Office on the Foreign Land. Based on the Joint Decree and the Minister of Religion Affairs Decree, the Muslim Indonesian citizens who intend to commit their marriage on the foreign country should register their marriage to the Marriage Registration Officer from the consular unit on the foreign country where they stay (Kementarian Agama, 1999).

On the other hand, the requirements for the registration of the marriage between the Muslim Indonesian citizen and the non-Muslim Indonesian citizen on the foreign country have been regulated in the Presidential Decree Number 25 Year 2008. In this Presidential Decree, it is stated that the marriage of Indonesian citizens that takes place on the foreign country should be registered to the authorized institution of the local country and should be reported to the Representative of the Republic of Indonesia. If the country does not acknowledge the marriage of fellow Indonesian citizens, the registration should be conducted by the Representative of the Republic of Indonesia. Afterwards, the Representative of the Republic of Indonesia shall register the marriage into the Register of Marriage Certificate. Then, the Copy of Marriage Certificate shall be issued. In addition to the requirements, based on Article 56 Paragraph (2) of Marriage Law and Article 37 of Law Number 23 Year 2006 regarding Residential Administrative it is mentioned that within one year after the husband and the wife has returned to the country of the Republic of Indonesia their marriage certificate should be registered to the office of marriage registration in which they live (Kementarian Agama, 2006).

From the above elaboration, it is apparent that there are several processes that Indonesian citizens should complete when they want to register their marriage on the foreign country. First, the Indonesian citizens should register their marriage to the authorized institution of the local country where they live and should report their

marriage registration to the Representative of the Republic of Indonesia. Second, if the country where the Indonesian citizens live does not acknowledge marriage registration for foreign citizens, the registration should be legalized by the Representative of Republic of Indonesia. Subsequently, the Representative of Republic of Indonesia will input the marriage registration to the Register of Marriage Certificate and issue the Copy of Marriage Certificate. Third, if the Indonesian citizens who have committed their marriage on the foreign country return to Indonesia they should report to the acting institution where they live within 30 days after their arrival.

The Legal Effectivity Theory

The term legal effectivity theory comes from English. In Dutch the term is known as *effectiviteit van de jurisdictietheorie*. On the other hand, in German the term is known as *wirksamkeit der rechtlichkeitstheorie*. Basically, from the three terms regarding the effectiveness of legal theory there are three important elements namely legal, effectivity, and theory. According to the Great Dictionary of Indonesian language, the term effectiveness leads to two meanings namely effective and effectiveness. The term effective bears the following implication: (1) having effect (influence and impression); (2) being efficacious; (3) bringing about results, being powerful; and (4) being implemented (with regards to regulation and legislation). On the other hand, the term effectivity bears the following implication: (1) influencing situation, having impression; (2) efficacy; (3) success (action, effort); and (4) implementation (with regards to regulation and legislation) (Department of Education and Culture, 1989: 219).

Regarding legal effectivity theory Anthony Allot stated that:

“Law will be effective if the objective, the presence, and the implementation of the law is able to prevent undesired behaviours and is able to eliminate chaos. An effective law in general is able to manifest anything that has been designed” (Li-wupung, nd: 80).

Similarly, Hans Kelsen defined legal effectivity as follows:

“The situation in which whether people in the reality commit any action that, according to certain manner, intends to avoid the penalties which have been imposed by the legal norms or the non-legal norms and whether the penalties should be fully exerted if the requirements for the penalty imposition have been fully completed or have not been fully completed” (Kelsen, 2006: 39).

Based on the two theories, it might be understood that legal effectivity theory refers to the theory that studies and analyses the success, the failure, and the factors that influence the law implementation.

The law that has been implemented in a country governs all citizens since the principle is equality before the law. However, in the practice the legislation that has been designed suffers from violation for most of the time; as a result, the legislation becomes ineffective. The ineffectiveness of the legislation might be caused by the fact that the legal materials are unclear, the law enforcement apparatus are inconsistent, and/or the society does not support the implementation of the legislation.

Lawrence M. Friedman (2001: 7 – 9) stated three elements that should be given attention in the efforts of law enforcement and the three elements are legal structure, legal substance, and legal culture. Paying attention to the three elements of law enforcement are very important because the efficacy of law implementation heavily depends on the three elements.

The success or the effectiveness of law implementation refers to the situation in which the law that has been already achieves the desired intention since the intention of legal norms is to regulate human interest. If the legal norms have been implemented by the law enforcement apparatus and the society, then the law implementation will be considered effective. Then, with regards to the case of the study, the legal effectivity theory will serve as the analytical device in viewing the process and the problems of marriage registration for Indonesian citizens in

the Netherlands. In the present study, the legal norms will refer to the legal norms that have been formulated in Law Number 1 Year 1974 regarding Marriage and its legal derivation.

RESEARCH METHOD

The descriptive qualitative study might be considered as an empirical legal study; as a result, the approach that should be adopted was the juridical sociological approach. Through the juridical sociological approach, a study was conducted toward the implementation of the legal norms that had been contain in Law Number 1 Year 1974 regarding Marriage and its legal derivation. In the same time, the study also afforded to link the problems (please consult the problem formulations of the study) and the real conditions that had been found in the field especially in the research site namely the Netherlands.

The data in the study were gathered through observation, interview, and library study. The observation was conducted on the Office of the Republic of Indonesia Embassy in the Netherlands and the activity of marriage registration. Next, the interview involved the Marriage Registration Officer and the Headman in the Indonesian Embassy located in Den Haag, the religious figures, the Caretakers of PPME and of religious institutions in the Netherlands, and several Indonesian citizens who had committed both the fellow Muslim marriage and the mixed-marriage. The total number of the informants was 19 people. Last but not the least, the library study involved several books, results from several studies, and documents that had been relevant to the case of the study.

After having been gathered, the data were analysed through a process known as data reduction. In the data reduction, the data that had been relevant to the subjects of the study were selected while the data that had not been relevant were eliminated. Afterwards, the data reduced were categorized based on the items in the study. Subsequently, the data that had been categorized were process by using the descriptive

analytical approach.

The study took place in Den Haag, Leiden, and Amsterdam. These cities were selected because there have been many Indonesian citizens who live there. As a result, it might be assumed that there have been many problems in relation to marriage registration of Indonesian citizens.

RESULT AND DISCUSSION

The History of Indonesian Citizens Arrival in the Netherlands

The Dutch used to explore the world in the 16th Century. At the beginning, the exploration was conducted on the behalf of trading mission; however, the exploration turned into an expansion and occupation on the areas that produced the trading commodities. The mobility of the Dutch people from that very century had opened wider connection between the Dutch and the people from other nations throughout the world and one of the countries that had been visited by the Dutch was the Archipelago. Arriving at the 17th Century, the Dutch trading company known as VOC had been evolving especially in terms of power on the occupied areas. As a result, the intensity of the relationship between the Dutch and the archipelagic people increased. Unfortunately, the relationship had been imbalanced because since the beginning the Dutch became the lord while the archipelagic people became the vassal due to the Dutch occupation. During this period, Archipelagic or Indonesian people started travelling to the Netherlands; however, the Archipelagic or Indonesian people who came to the Netherlands were the servants who had been brought by their Dutch masters (Nurlaili, 2016).

Approaching the end of 19th Century, along with the appearance of liberal movement in the Netherlands a new policy known as *De Ethische Politiek* or *Politics of Goodwill* came to surface. The Dutch people started thinking about the goodwill that they should display as their thankfulness for the nation who had been contributing a lot of profits to their country. A number of schools were established in Indonesia.

Consequently, the Indonesian or Archipelagic people who came to Netherlands were not only servants or maid but also students who had mostly been from the royal family (Interview with Abdullah on April 28, 2017).

In the midst of 20th Century, after the Declaration of Indonesian Independence in 1945 the relationship between Indonesia and the Netherlands changed. The arrival of Indonesian people to the Netherlands was more of the symbol for the ambassador of an independent country with equal footing. The Republic of Indonesia Embassy for the Netherlands was opened in Den Haag on 1950. The opening of the embassy marked the improving relationship between the two nations that had previously been hostile before and during the Independence Day, namely from August 17th, 1945 until 1949. The number of Indonesian citizens who came to the Netherlands had been increasing since 1950s, especially the citizens who were the descendants of mixed-marriage between Indonesian and Dutch People (known as Indo) and ex-KNIL (Koninklijk Nederlandssche-Indische Leger) troopers from Moluccas. The number of KNIL troopers who came to the Netherlands was around 3,500 people (now the descendants of these KNIL troopers have been around 60,000 people and they have been registered as Dutch citizens). The migration of Indonesian citizens to the Netherlands had been increasing, especially since 1970. The reason was that the employment in the Netherlands had been widely opening. In addition, many university students came to the Netherlands but did not return to Indonesia because they have already established and felt comfortable with their lives in the country (Wibowo, 2018).

The Netherlands is one of the European countries that have drawn the interest of tourists throughout the world. In addition, many immigrants from the nations all round the world decide to live in the Netherlands. These immigrants have been established with their lives in the country; as a result, the Netherlands now is also known as a multi-ethnic country. These immigrants do not only come from

fellow European countries but also come from Turkey, Morocco, Suriname, Pakistan, and Egypt (Statistics the Netherlands, 2018).

The number of Indonesian citizens who come to and even stay permanently in the Netherlands has been increasing. Based on the data from 2009 National Election, the numbers of Indonesian passport-holders in the Netherlands were around 15,000 people (Putra, 2015). Not to mention, Indonesian citizens are the third biggest immigrants in the Netherlands after Moroccan and Turkish. Nowadays, based on the data from Central Bureau of Statistics the Netherlands (Centraal Bureau van Statistiek) in 2015 there were 12,016 Indonesian citizens who had living permit in the country. This figure had not included the Indonesian citizens who did not report their presence in the country. There were only some Indonesian citizens who had the awareness to report important incidents that had been related to their presence. The reason is that they do not only have minimum knowledge with regards to the reporting mechanism but also suffer from long distance and reluctance to spare specific time for dealing with the reporting mechanism. Not to mention, there are still many Indonesian citizens who do not have Central Number of Identification (NIK, Nomor Induk Kependudukan) in the country. Apart from these situations, there is a rumour that there have been 1.7 million Dutch people who have relationship to Indonesia. In the same time, the Dutch people also warmly welcome Indonesian people. For the Dutch people, Indonesian people are the most favourable immigrants due to their courtesy and politeness (Statistics the Netherlands, 2018).

In sum, the Indonesian people who come to the Netherlands have various background and objectives. First, during the colonial era the Indonesian people have been brought as servants or maids. Second, the Indonesian people have come as students but then they have decided to stay and live in the Netherlands. Third, the Indonesian people who have come to the Netherlands are the descendants of mixed-marriage between Indonesian and the Netherlands people and also

of ex-KNIL troopers; these people left Indonesia during the reign of Old Order. Fourth, there are Indonesian people who come to the Netherlands but later they decide to spend their lives in the country (Arief, 2010).

In the present time, generally Indonesian people come to the Netherlands as workers. The factors that drive the departure of Indonesian people to the Netherlands are high salary, high exchange rate from Euro to Rupiah, legal certainty and enforcement, very sufficient facilities that support the daily life, presence of social security during the unemployment, educational allowance, and clean environment. These factors finally have encouraged the Indonesian people to decide to stay in the Netherlands (Putra, 2015).

The Role of the Republic of Indonesia Embassy in Den Haag in Marriage Registration

According to the requirements issued by the Joint Decree between Minister of Religion Affairs and Minister of Foreign Affairs Republic of Indonesia Number 589 Year 1999 and Number 182/OT/99/01 Year 1999, the location of marriage registration on foreign country is the Republic of Indonesian Embassy or the Representative of Indonesian Authority on the foreign country. Based on these requirements, the Indonesian citizens who live in the Netherlands and want to get married should register their marriage in the Republic of Indonesian Embassy in Den Haag (Interview with Nurhasyim on April 25, 2017).

Accordingly, for the Minister of Religion Affairs Republic of Indonesia Decree Number 463 Year 2000, delegation of Authority for the Appointment of Marriage Registration Officer on foreign country, in the Netherlands an officer has been appointed and the officer is the individual who has expertise on the consular domain within the scope of the Office of Indonesian Authority Representative. Furthermore, the Decree also states that if the Marriage Registration Officer does not master the *munakahat* law and/or due to the area coverage the Marriage Registration Officer is unable to perform his duties then

the Chief of the Office of Indonesian Authority Representative is allowed to appoint Assistant Marriage Registration Officer who then shall serve as the headman. Based on the requirements, the Republic of Indonesian Embassy in Den Haag has appointed Mr. June Kuncoro Hadiningrat as the Marriage Registration Officer and Mr. Nurhasyim Subadi as the Headman (Interview with Kuncoro Hadiningrat on April 28, 2017).

The Republic of Indonesia Embassy office is located in Banstraat Street, Den Haag, the Netherlands. The distance between the Embassy Office and the Central Den Haag area is around 5 kilometres. The Embassy Office opens daily during the office hours in order to deliver the service for the Indonesian citizens who live in the Netherlands and the service that the Embassy Office delivers includes passport and visa validation, marriage registration for fellow Indonesian citizens, birth certificate registration, marriage registration certificate, corpse/ash shipping permit to Indonesia, divorce registration certificate, mutation certification, document legalization, copy of document validation, and alike.

The Consular Department of the Republic of Indonesia Embassy may register marriage if both the groom and the bride are Indonesian citizens, Muslim, and they meet the requirements that have been stated in the Marriage Law No. 1/1974. For the marriage that is held by the Indonesian Embassy, the Consular Department shall provide Marriage Book to the bride and the groom as having been issued by the Office of Religion Affairs (KUA, Kantor Urusan Agama) for each marriage of Muslim spouses in Indonesia. This provision is in accordance to the regulations that have been issued by the Dutch Government, namely if the bride or the groom or if both of the bride and the groom are Dutch citizens or the citizens from other country then their marriage should be registered in Gemeente (local office of Dutch authority).

From the above paragraph, it is clear that the Indonesian spouses are both Muslim then

their marriage registration will be at the service by the Indonesian Embassy. However, the spouses should notify their marriage first to the Embassy. The marriage notification might be done by completing the following administrative requirements (Interview with Nurhasyim on April 26, 2017):

1. Copy of valid passport
2. Copy of living permit (policemen ID card) or copy of ID card for Indonesian citizens
3. Birth certificate
4. Proposal to the Head of Consular Department of the Republic of Indonesia Embassy with regards to marriage
5. Four 4x6-sized photos and four 2x3-sized photos
6. Obit of previous husband or wife or divorce papers for the case of divorce with regards to the second marriage or more (for example: if the obit or the divorce papers has or have been issued for more than six months then the letter or the papers should be supplied by widow/widower statement which confirms the state of not getting married in the present time)
7. For the Dutch citizens, a statement from the Gemeente in the form of a copy of residential identity (Uittrekseluit Bevolkings register) along with the notification of nationality and marital status
8. Statement of approval by the Office of Religion Affairs to hold the marriage in the Republic of Indonesia Embassy Den Haag (for the spouses who live in Indonesia)
9. Statement of proposal from the father of the bride or the bride herself to the Head of Consular Department/the Headman of the Republic of Indonesia Embassy to conduct the marriage ceremony or to serve as trustee (if the parents are absent)

The forms that should be submitted as part of

marriage registration requirements are arranged in the paragraphs of Minister of Religion Affairs Decree No.3/1975. These requirements are:

1. Statement of approval from both the bride and the groom
2. Statement of marriage from the Chief of Village in which the bride and the groom have been living (Na Model)
3. Statement of parental status (Nh Model)
4. Statement of origin (Nf Model)
5. Marriage conduct within 10 days after notification

In addition to the above requirements, both the bride and the groom should also meet the requirements that have been regulated by Law of Marriage Republic of Indonesia (Law No. 1 Year 1974).

Up to the present time, the Republic of Indonesia Embassy has been delivering the service of marriage registration for the Indonesian citizens. The Indonesian spouses who register their marriage are not numerous. Based on the registration of Marriage Certificate in the Republic of Indonesia Embassy, from 1992 until the present day there are only 1 until 7 people registering their marriage in each year. In average, there are only three spouses who register their marriage in each year. This figure is indeed smaller than the number of Indonesian citizens who register their marriage in the Gemeente or the office of local authority (Interview with Nurhasyim on April 26, 2017).

In line with the regulations stated by the Dutch authority, with regards to the Indonesian citizens who marry the Dutch citizens or other citizens (mixed-marriage) or the marriage of Indonesian citizens who are non-Muslim, the registration of their marriage will be committed by the office of Dutch authority instead of the Indonesian embassy. The number of Indonesian citizens who register their marriage in the office of local authority (Gemeente) is higher than the number of Indonesian citizens who register their marriage in the Indonesian embassy. As a matter of comparison, based on the data from

the Republic of Indonesia Embassy in 2015 the number of Indonesian citizens who registered their marriage was 47 people, in 2016 65 people, and in 2017 (until the end of April) 18 spouses. Furthermore, based on the requirements by the Indonesian authority the Indonesian citizens who

register their marriage in the Gemeente should report their marriage to the Indonesian Embassy. In the subsequent process, the Republic of Indonesia embassy will issue Copy of Marriage Registration on Foreign Country (Interview with Nurhasyim on April 26, 2017).

Table 1. Number of Indonesian Citizens Marriage within the Last Three Years

No	Year	Marriage Registration in the Indonesian Embassy	Marriage Registration in the Gemeente
1	2015	0	47
2	2016	7	65
3	2017 (until April)	1	18

Source: Republic of Indonesia Embassy Den Haag, April 2017

Marriage of Indonesian Citizens in the Netherlands

As having been explained previously, there are Indonesian citizens who register their marriage in the Indonesian Embassy and there are other Indonesian citizens who register their marriage in the Gemeente. The process of marriage registration for the Indonesian citizens who live in the Netherlands is not complicated. Several informants mentioned that when they came and informed that they wanted to commit their marriage, the Indonesian Embassy would provide them with guidance and direction. At that moment, the Indonesian Embassy explained the requirements that the spouses should complete, especially the documents that should provide from Indonesia. If the requirements had been completed, the Indonesian embassy would schedule their marriage at least within 10 days. Afterwards, the Indonesian Embassy would notify the marriage of the Indonesian citizens in several media such as the official website of the Republic of Indonesia Embassy, the notification board in the Republic of Indonesia Embassy, and the notification board in the mosques around Den Haag.

According to the time agreed between the bride and the groom and also the Indonesian Embassy, the marriage procession can be carried out. Usually, the procession took place in either

the mosque or the house. The procession would be attended by two officers from the Indonesian Embassy who serving as the Headman and the Marriage Registration Officer altogether with the relatives from both the bride and the groom. Generally, the procession would not demand the presence of a trustee. Due to the expensive transportation cost and the busy activities, the trustee did not come to the Netherlands but, instead, stayed in Indonesia; as a result, he would be unable to attend the marriage procession. Therefore, the Indonesian Embassy should confirm the presence of the trustee first via phone call. By the time that the trustee had confirmed his absence, the trustee has delegated his authority over the marriage procession to the headman so that the headman might lead the procession of *ijab-qabul*. After the procession had been ended, the husband and the wife were provided with the marriage book from the Indonesian Embassy.

Most of the Muslim marriage processions were held in the mosque. There are several mosques in the Netherlands and one of them is Al-Hikmah Mosque in Den Haag. There were so many Muslim marriage processions held in this mosque. The mosque was established in 1995. At the beginning, the Indonesian Muslim people only had one mosque i.e., Musholla Al-Ittihad. Over the time, the mosque was not sufficient anymore for the Muslim people to perform their prayers

since the number of Indonesian Muslims has been increasing at that time in the Netherlands. To construct a new building in the Netherlands was not easy whereas at the same time there were so many churches that have not been in function anymore and therefore has been put on sale. One of the churches was the Immanuel Church.

In 1995, Probosutedjo, one of the Indonesian businessmen, bought the church and gave it to the Indonesian Muslims on the behalf of his elder brother, R.H. Haris Sutjipto, who passed away in Leiden on December 1995 after having treatment there. Since the building was originally a church, from the outside the newly bought Al-Hikmah Mosque was unlike any typical mosque; the original construction of Al-Hikmah Mosque was two-story building without any dome. After the Muslim people entered the mosque, the design of any typical mosque came to surface; inside, the Indonesian Muslims found the *mihrab* and the *sajadah* (prayer mattress). The mosque was handed over by Probosutedjo to the Indonesian Muslims on July 1st, 1996. Nowadays, in every compulsory five-time prayer (*sholat rawatib*) the mosque will always be full of people performing prayer, not only by the Indonesian Muslims but also the Muslims from other countries (Interview with Nurhasyim on April 26, 2017).

From the above explanation, it might be concluded that the process of marriage registration for the Indonesian citizens in the Republic of Indonesia Embassy is simple and not complicate as long as the requirements are complete. The Indonesian Embassy also provides consultation for the spouses who have difficulties in completing the administrative requirements. Then, with regards to charge, according to the spouses who married in 2012 the charge for the marriage registration in the Republic of Indonesia Embassy was € 35.00. However, based on the letter of notification that has been issued by the Head of Indonesian Representative Office the charge for marriage registration is € 0.00 (Interview with Abdullah on April 28, 2017).

For the marriage registration of fellow

Indonesian citizens, the Indonesian Embassy also provide the service to the Indonesian citizens who have official living permit in the Netherlands provided by the Gemeente and also to the Indonesian citizens who do not have the official living permit (undocumented living permit). The principle is that the Republic of Indonesia Embassy delivers all of the necessary service to the Indonesian citizens who live in Netherlands as long as they have the complete administrative requirements for the marriage registration.

If the requirements are not complete, the Indonesian Embassy shall deny the proposal of marriage registration. The Indonesian citizens who do not have complete administrative requirements, they will usually prefer to commit the *sirri* (unofficial) marriage and this kind of marriage will not be registered. The number of Indonesian citizens who commit such marriage is still unknown. One of the informants stated that in one year usually he witnessed one *sirri* marriage procession or two committed by the Indonesian citizens.

Marriage Registration for Mixed Marriage

There are different principles applied onto the personal status in several countries. Several countries have implemented the principle of nationality, while several other countries have implemented the principle of residence. For the countries that have implemented the principle of nationality, the personal status of an individual is defined by the national law. On the other hand, for the countries that have implemented the principle of residence the personal status of an individual is defined by the governing law in his or her state of residence. Then, the examples of the countries that have implemented the principle of nationality are France, Italy and their occupied lands, Belgium, Luxembourg, Monaco, the Netherlands and their occupied lands, Bulgaria, Finland, Greece, Hungary, Spain, Sweden, Turkey, Japan, and several Latin America countries. These countries in general implement the Civic Law System, namely the law

system that subjects to the governing law of the related individuals (Wahyuni, 2016: 20).

On the contrary, the countries which have applied the principle of residence are England and their conquered lands, Scotland, South Africa, Canada, Denmark, Norway, Brazil, Guatemala, Nicaragua, Paraguay, Argentine, Bolivia, and Peru. These countries implement the Common Law System, namely a law system in which every individual who lives there should subject to the governing law of these countries (Wahyuni, 2016: 20).

The Netherlands is a country that adopts Civic Law System. As a result, the law that applied in the country for the immigrants is the law of the immigrants' country. In relation to the system, for the Indonesian citizens who want to get married in the Netherlands they should abide to the marriage law that has been implemented in Indonesia. The consequence is that the fellow Muslim Indonesians might commit their marriage in the Republic of Indonesia Embassy while the Indonesian citizens who might be involved in a mixed-marriage should commit their marriage in the Gemeente (Interview with Kuncoro Hadiningrat on April 28, 2017).

The mixed-marriage might be committed both on the foreign country or the Indonesian country. When the mixed-marriage is committed on the foreign country, the mixed-marriage will be legal if the marriage is committed in accordance to the governing law of the foreign country on which the Indonesian citizens have been living and the Indonesian citizens do not violate Article 56 of Marriage Law.

The requirements of mixed-marriage have been defined in the Marriage Law. According to Article 56 Paragraph (1), it is stated that: the marriage between two Indonesian citizens or between an Indonesian citizen and a foreign citizen will be legal if the marriage is committed according to the law of the country in which the marriage takes place and if the Indonesian citizens do not violate the requirements in the Marriage Law. From this paragraph, it might be realized

that a mixed-marriage will be considered legal if the mixed-marriage is committed according to the legal requirements of the country in which the marriage is committed (Departemen Agama, 1974).

Furthermore, in Article 57 the term mixed-marriage is defined as the marriage between two individuals in Indonesia that subjects to different legal system because one individual holds the status of Indonesian citizen while the other individual holds the status of foreign citizen. Based on the definition provided by the Marriage Law, the mixed-marriage registration might not be performed in the Republic of Indonesia Embassy; instead, the mixed-marriage registration might be performed in the Gemeente.

Within the process of mixed-marriage registration, several informants informed that in general mixed-marriage registration might be done although the process was complicated and was unlike the marriage of fellow Indonesian citizens (Interview with Abdullah on April 28, 2017). For the Muslim Indonesian citizens who want commit mixed-marriage the requirements that should be met are as follows:

1. A copy of the groom's passport
2. A copy of the groom's identity card
3. A copy of the bride's passport
4. A copy of the bride's passport (translated into Dutch and should be legalized by village authority, notary, Ministry of Legal and Human Rights Affairs, and Ministry of Foreign Affairs)
5. Original ID card (translated into Dutch and should be legalized by Ministry of Legal and Human Rights Affairs and Ministry of Foreign Affairs)
6. A copy of the bride's family card (translated into Dutch and should be legalized by Ministry of Legal and Human Rights Affairs and Ministry of Foreign Affairs)
7. A copy of the bride's birth certificate (translated into Dutch and should be

legalized by Ministry of Legal and Human Rights Affairs and Ministry of Foreign Affairs)

8. Statement of conversion into Islam
9. Letter of statement from Village Chief
10. N1 and N2 Model form
11. N2 Model form
12. Affidavit of unmarried (translated into Dutch and should be legalized by Ministry of Legal and Human Rights Affairs and Ministry of Foreign Affairs)

The bride and the groom or their family might afford the completion of these administrative requirements; however, usually the bride and the groom rely on the assistance of service bureau for completing these administrative requirements. If they do not rely on the assistance then the bride and the groom should be involved in a long process because they have to ask the legalization of their documents to several institutions (Ministry of Foreign Affairs, Ministry of Legal and Human Rights Affairs, and Ministry of Religion Affairs). Not to mention, the bride and the groom also have to ask the legalization of their documents to the office of village authority, district authority, and religion affairs.

After the Indonesian administrative requirements have been completed, the spouse then should register their marriage to the Gemeente independently or communally through the assistance of the European Association of Muslim Youth (PPME, *Persatuan Pemuda Islam se-Eropa*). The bride and the groom should register their files according to the schedule that they desire. If the registration is done in Monday morning then the spouse will be free of charge. On the other hand, if the registration is done in weekday then the spouse will be charged € 150 and if the registration is done in weekend then the spouse will be charged € 600 (Interview with Nurhasyim on April 26, 2017).

Based on the interview with several Indonesian citizens who have committed mixed-marriage, it can be seen that they are facilitated by the European Association of Muslim Youth

or PPME. PPME was established by Indonesian people who live in the Netherlands. PPME pays attention not only to the Indonesian-style diversity but also the conditions in the Netherlands, especially in the efforts of enforcing the identity of their diversity. PPME has been facilitating Muslim marriage since March 29th, 1975. Ever since then, marriage has been the part of PPME programs. At the beginning, the Muslim marriage that used to be handled by the Board of PPME in the Netherlands was not well registered; as a result, the information with regards to the number of Muslim marriages was not well documented. However, over the time the Muslim marriage has been well document. Then, in committing Muslim marriage, the spouses under the arrangement of the Board of PPME serve as the trustee, the witness, or the registrar not only for the Indonesian Muslim marriage but also for the Indonesia Muslim mixed-marriage (Sujadi, 2013)

In order to assist the facilitation of marriage registration, the PPME usually charges € 200 (outside the charge that should be paid to the Gemeente) to the Indonesian Muslim spouse. The charge is not fully given to the PPME; instead, the charge will be split into the operationalization of PPME and of the mosque where the Indonesian Muslim citizens will commit their marriage (Interview with Hambali on April 28, 2017).

The marriage procession will be held within several days after the marriage has been registered to the Gemeente. According to the Dutch legislation, there shall not be any marriage procession unless the marriage has been registered to the Gemeente. As a consequence, every spouse of mixed-marriage in the Netherlands should register their marriage first. It is after the marriage registration that the spouse shall be allowed to hold their marriage procession. Then, in addition to assisting the marriage preparation and procession, the PPME also issues the marriage book for the Muslim mixed-marriage. The issuance of the marriage book is intended to serve as the evidence of Muslim marriage since the letter of statement that the Gemeente issues

serve as the evidence of marriage registration and thus it may not serve as the evidence of Muslim marriage (Interview with Nurhasyim on April 26, 2017).

Problem of Marriage Registration for Indonesian Citizens

In general, both the Indonesian citizens who register their marriage in the Republic of Indonesia Embassy (fellow Muslim Indonesians) and the Indonesian citizens who register their marriage in the Gemeente (Indonesian citizens who are involved in mixed-marriage) do not experience serious difficulty. However, the Indonesian citizens who are involved in mixed-marriage have more administrative requirements that should be completed and should come to several ministries. In addition, these citizens should translate their administrative requirements into Dutch and the Dutch translation of their administrative requirements should also be legalized by the Ministry of Legal and Human Rights Affairs and the Ministry of Foreign Affairs; as a consequence, the process for the registration of mixed-marriage tends to be relatively complicated and time consuming. The process of completing and translating the administrative requirements is usually facilitated by a service bureau. The charge for the assistance by the service bureau is usually around IDR 2,000,000.00 (Interview with Chafik Snee on April 29, 2017).

In addition to completing the administrative requirements, the Indonesian citizens who commit the mixed-marriage should attend Dutch language courses first and they should graduate from these courses. This is logical because the Indonesian citizens who commit the mixed-marriage later will live in the Netherlands. In spite of the importance, the Dutch language courses usually incur around € 150.00. The Indonesian citizens who will live in the Netherlands should also pay for their living permit, which is also around € 150.00. Furthermore, if the groom who will commit the mixed-marriage holds the Dutch citizen status then he will be exposed to additional requirement: he should have sufficient

salary to support the life of him and his family in the Netherlands; the minimum amount of sufficient salary is around € 1,400.00 (Interview with Chafik Snee on April 29, 2017).

With these multiple requirements that should be completed, many spouses are unable to register their marriage; as a result, they will decide to commit their marriage in Indonesia. The requirements of marriage registration in Indonesia are much easier to complete; administratively, the requirements are just the same but the documents should not be translated into Dutch language. Not to mention, the Indonesian citizens are not obliged to attend Dutch language courses and the groom himself should not have sufficient amount of salary. However, if the spouse of a mixed-marriage later decide to live in the Netherlands then the requirements of marriage registration that have been issued by the Gemeente shall be applied.

In addition to these problems, mixed-marriage implies several legal consequences. First, in Article 58 of Marriage Law it is stated that the foreign citizens who will commit a mixed-marriage may earn the status of their nationality from the husband/the wife and may also lose the status of their nationality according to the manners that have been defined in the Citizenship Law of the Republic of Indonesia. Based on the statement, the Indonesian citizens who commit mixed-marriage and decide to adopt the status of their spouse's nationality (for example, the status of Dutch nationality) will lose their status of Indonesian nationality; as a result, they may lose the right of their property in Indonesia. With regards to the statement, several Indonesian citizens do now want to change the status of their nationality. The decision is usually included into the pre-marital agreement with the husband/wife. The reason, usually stated by the wife, is that they do not want to lose their property in Indonesia.

Second, the vulnerable problem that usually appears to the surface in a mixed-marriage is the problem of the child's nationality. The old

Citizenship Law (Law Number 62 Year 1958 regarding Citizenship) adopted the principle of single citizenship; as a consequence, the children who were born in a mixed-marriage family would only adopt one nationality, which was determined by the Law that the adopted citizenship should be citizenship of their biological father. Such policy triggers certain problems especially if the mixed-marriage family suffers from divorce; in the case of divorce, the mother will certainly have difficulties to attain the custody of the child. The Republic of Indonesia adopts the principle of *iussanguinis*; consequently, the child will adopt the nationality of the parent, namely the biological father. For example, the child who is borne from Dutch father and Indonesian mother will be considered as a foreign citizen. However, since 2006 the Republic of Indonesia Government and the House of Common have issued the new Citizenship Law which has several amendments and one of the amendments is related to the legal status for the children who are born in the mixed-marriage families. The new Citizenship Law implies positive enlightenment, especially in the relationship between the mother and the child, because the new Citizenship Law give permissions to the limited status of double citizenship for the children who are born in the mixed-marriage families. Based on the new Citizenship Law, a child who is born in a family of Indonesian mother and foreign father or who is born in a family of foreign mother and Indonesian father will both be equally admitted as Indonesian citizen (Article 4 letter c and d of the new Citizenship Law). The child will have limited status of double citizenship and after he or she is 18 years old or is married the child should make decision on the status of his or her nationality. The statement of decision over the nationality status should be sent 3 (three) years at most after the child is either 18 years old or is married (Article 6 of the new Citizenship Law). The provision of limited status of double citizenship is a positively new breakthrough for the children who are born in mixed-marriage family (Nilawati, 2014: 95–108).

Third, the marriage statues for the Indonesian spouse who share different same during their marriage registration in the Gemeente might be justified by the Dutch law but this type of marriage might be a polemic because it is not justified by the Indonesian law. According to the Indonesian law, which adopts the religion marriage principle, a marriage should be done under the same faith. In Article 56 verse (1) of Marriage Law it is stated that the marriage that has been done on the foreign country will be legal if the marriage is done according to the governing law on the foreign country and does not violate the Law (the governing law in Indonesia). Based on the Article, the marriage of Indonesian spouse on the foreign country should not only meet the governing law on the foreign country but also the governing law that has been approved in Indonesia. The implication is that the cross-religion marriage may not be considered legal or may not be approved by the Indonesian law although it is done on the foreign country since Law Number 1 Year 1974 declares that a legal marriage is a marriage that had been done according to the law of each faith and religion and that has been registered according to the governing legislation. In addition, according to the Compilation of Islamic Law (Presidential Instruction Number 1 Year 1991) in Article 40 and Article 44 it is strictly defined that, "The marriage between a man and a woman is prohibited under certain circumstance namely the woman does not share the faith of Muslim and, on the other hand, a Muslim woman is prohibited to marry a man who does not share the faith of Muslim." In the Compilation, it is principally stated that the cross-religion marriage is fully prohibited.

The Impact of Unregistered Marriage in the Netherlands

As having been mentioned in the previous section, several Indonesian citizens in the Netherlands have decided to do *sirri* marriage or religion-based marriage and they do not register their marriage in the *Gemeente*. This kind of marriage is not legally justified both by the

Indonesian law and the Dutch law. The Indonesian citizens who decide to do such marriage usually do not have complete legal administrative requirements from the previous marriage; for example, they do not have legal divorce papers from the district court. Due to such situation, these spouses decide to not register their marriage and thus to do the *sirri* marriage. The *sirri* marriage is usually done before the religious figures in their house instead of the mosque since typically the mosque caretaker does not accept the conduct of *sirri* marriage (Interview with Setiawan on April 29, 2017).

For the spouses who conduct the *sirri* marriage in the Netherlands, they do not experience directly the negative impact from the marriage. They may register themselves as partners. However, the children that are born in the *sirri* marriage will only be registered as the children of the mother in their birth certificate; in other words, the name of their biological father will not be registered in the birth certificate. In social terms, such situation does not result in negative impact because the rights of these children are not diminished and they are still provided with the social security from the government. The Dutch Government has provided social security approximately € 370.00 for each child and the social security is transferred to the bank account of the father. In case of a divorce, the social security should be transferred to the child and the ex-wife should be provided by the social security and the amount of the social security should be in accordance to the arbitrage or the court decision. The amount of the social security for the ex-wife should not be less than € 700.00 and this amount should be paid in each month until the ex-wife might be independent or, in other words, until the ex-wife married a new spouse (Interview with Setiawan on April 29, 2017).

A country has the sovereignty to not subject to other authority i.e., to not admit and implement the law of the foreign authority. As a result, there are some countries that adopt the Common Law. These countries implement the principle of residence in the case of personal status. With the

implementation of this principle, a citizen from any country in the world should subject to the governing law of their countries when it comes to the case of personal status. Then, in the case of marriage these countries implement the principle of *lex loci* celebrations or the reference to the country on which the marriage is conducted.

The situation in these countries is different than the situation in the countries that adopt the principle of legal continuation or vested right. This principle implies that the rights that have been attained according to the foreign law are admitted and fully exerted by the judge in the home country or the rights that have been attained in the foreign land are admitted and respected as much as possible.

Along with the globalization era and due to the rapid rate of information and easy access of transportation, nowadays many Indonesian citizens who have been living abroad and conducting mixed-marriage. According to Article 57 Law Number 1 Year 1974 regarding Marriage (Law of Marriage), it is stated that mixed-marriage is a marriage between two Indonesian citizens who subject to conflicting laws or who have different status of citizenship with one foreign citizen and one Indonesian citizen (Departemen Agama, 1974).

In addition to the case of mixed-marriage, the case of the marriage conducted by Indonesian citizens on the foreign country also involves the couples who have different faith or different religious background. Based on the Law of Marriage Article 56 Verse (1), it is stated that in the law of marriage the principle of International Civic Law (HPI, *Hukum Perdata Internasional*) that Indonesia has adopted refers to the combination between the principle of citizenship, namely the matters that do not violate the legislation, and the principle of *lex loci* celebrations, namely the reference to the law of the country where the marriage is conducted or the law of the foreign country itself. Based on the two principles that have been adopted in Article 56 Verse (1), the (cross-religion) marriage

that have been conducted on the foreign country is not in accordance to the law of marriage which basis is religion law that has been implemented in Indonesia; thus, such marriage has caused certain polemic known as conflict of laws (Wahyuni, 2016: 9).

The liberal Western countries usually adopt the principle of civil marriage; as a result, the marriage registration will not pay attention to the religion that each spouse has adopted (Wahyuni, 2016: 9). That situation is certainly different in comparison to Indonesia; Indonesia adopts the principle of religious marriage and as a result religion becomes part of public affairs. Therefore, the legality of mixed-marriage between Indonesian spouses in the Netherlands should be reconsidered because, although the mixed-marriage is declared legal by the Dutch law, the Indonesian law has not admitted such marriage (Wahyuni, 2016: 10). Although the marriage might be registered by the Registry Office, the marriage might potentially be a polemic since, based on Article 56 Verse (1) of the Law of Marriage, the Indonesian law admits the principle of *lex loci* celebrations and also the principle of religious marriage.

Law Number 1 Year 1974 Regarding Marriage contains an important principle in Verse 2 Article (1): "A marriage will be considered legal if the marriage is conducted based on the principle of each religion that has been adopted." This principle applies to all marriages that have been conducted in Indonesia, including the "cross-religion mixed-marriages." However, there are dissenting opinions among the law experts themselves (Sumarmo, 2009: 17).

The first opinion states that Indonesia is based on Pancasila; as a result, Indonesia respects the religions in the country and thus situates the religious law into the fundamental position. In a Pancasila-based country, any legislation should not violate the religious law. In the same time, the religions in Indonesia have prohibited the marriages between spouses from different faith or different religious background.

Then, the second opinion states that Article 2 Verse (1) of the Law of Marriage requires that each marriage should be conducted in accordance to the principles of religious law. With this requirement, there are many law pluralities that can be found in Indonesia due to the various religious laws. With the presence of religious laws and law plurality, the framework of national law system is demanded to regulate the mixed married in the internal Inter-Legal Law (HATAH, *Hukum Antar Tata Hukum*); this internal Inter-Legal Law will regulate the marriage between the spouses who have different marriage law in addition to regulating the mixed-marriage between the Indonesian citizens and the foreign citizens (Wahyuni, 2016: 11).

Next, the third opinion states that the Law of Marriage has regulated multiple forms of mixed-marriage (Third Part of Chapter XII) and the regulation also entails the regulation for the mixed-marriage between spouses who have different religious background. Article 57 should be understood altogether with the previous and the subsequent articles as a whole system. Mixed-marriage is a problem that refers to the conflict of laws from two laws of marriage; as a result, there should be a choice of law that leads to the admittance of one law of marriage namely the law of marriage that the husband has adopted. Consequently, in the case of mixed-marriage the law of marriage that the husband has adopted shall be governed (Ichtiyanto, 2003: 81-86).

In 2014, there was a student and several alumni from the Faculty of Law University of Indonesia who criticized Article 2 Verse (1) of the Law of Marriage in terms of marriage legality especially in relation to the legality of different religion-based marriage. The norm on the Article was deemed illegal by the applicant with regards to the legality of extra-religion marriage. As a result, the norm might contain an element of "coercion" for the citizens to subject to the religion and the faith in the domain of marriage (Panjimas, 2014).

The applicants reasoned that several cases of mixed-marriage had caused the excess of

legal smuggling. Consequently, the spouses who came from different religious background mostly performed numerous tricks in order that their marriage would be legal before the law and the examples of these tricks were conducting marriage on foreign countries, conducting marriage based on tradition, or temporarily adopting the husband's religion. Due to these tricks, the applicants demanded that the Constitutional Court to make interpretation that led to the state admittance toward different religion marriage (Panjimas, 2014).

The Constitutional Court through the decree number 68/PUU-XII/2014 turned out to reject the application toward the material test on Article 2 Verse (1) and Verse (2) of the Law of Marriage that the applicants had proposed. The Decree had rejected the approval on the different religion-based marriage. Therefore, the legal marriage in Indonesia will be the marriage between spouses who have one religious background in accordance to Law Number 1/1974 regarding Marriage (Mahkamah Konstitusi, 2014).

The Constitutional Court deemed that the Law of Marriage has been able to manifest the principles that have been contained in Pancasila and 1945 Constitution and also all kinds of realities that might be found in the Indonesian society. Furthermore, Article 28 J of 1945 Constitution states that in claiming their rights and independence every citizen is obliged to subject to the limitations that have been defined under religious consideration in the Constitution (Sahbani, 2014).

However, in the Decree that has been issued by the Constitutional Court the Constitutional Judge Maria Farrida Indrati proposed concurring opinion. She stated that the different religion-based marriage might not be solved only by referring to the Article 2 Verse (1) and Verse (2) of the Law of Marriage that resulted in multiple interpretations. According to Marria, the Law of Marriage should provide solutions to the citizens who, under certain circumstances, should conduct different religion-based marriage both in terms

of marriage legality and marriage registration. The reason is that marriage is a legal event that incurs rights and responsibilities to the given spouses. The attitude of Maria Farrida Indrati who carried out *concurring opinions* in the session was important and needed to be observed, because it could be used as an alternative for the legal reconstruction of different religion-based marriage problems, especially those took place on the foreign country (Sahbani, 2014).

CONCLUSION

The Netherlands is part of the countries that implement the Civic Law, meaning that the Netherlands implements the principles of citizenship and input the marriage law into the personal law. Therefore, the Indonesian citizens who conduct marriage in the Netherlands might refer to the Indonesian law; then, the Muslim Indonesian citizens might conduct their marriage in the Indonesian Embassy but the Indonesian citizens whose spouse hold foreign citizenship status should conduct their marriage in the *Gemeente*. The marriage registration of the Indonesian citizens in general does not incur serious problems. The Indonesian citizens are provided with guidance from the Indonesian Embassy in relation to the requirements for their marriage registration, the service during their marriage contract, and the provision of marriage book. On the other hand, the Indonesian citizens who conduct the mixed-marriage should register their marriage in the *Gemeente* and in general they experience certain difficulties during the completion of their administrative requirements. They should visit several ministerial offices (the Ministry of Religion Affairs, the Ministry of Foreign Affairs, and the Ministry of Law and Human Rights Affairs). In addition, these Indonesian spouses should translate the copy of their documents into the Dutch language and the translation should also be approved by the Ministry of Law and Human Rights Affairs and the Ministry of Foreign Affairs; such approval relatively demands enormous cost. Not to mention, these Indonesian spouses should attend

the course of Dutch language and they should pass the class while in the same time they should pay for their residence permit in the Netherlands. The Holland citizens who will marry the Indonesian citizens should also have sufficient salary in order to support their life in the Netherlands (which is around € 1,400.00).

There are several impacts that have been caused by the mixed-marriage of Indonesian citizens in the Netherlands. First, the Indonesian citizens who would like to marry the foreign citizens might lose their citizenship status. If they want to keep their citizenship status, then they have to report it to the officers of Indonesian Embassy. Second, the children who are born within the mixed-marriage will attain double status of citizenship until they reach the age of 18 years old or until they are married. After having reached the age of 18 years old or after having been married, the child should decide the citizenship statues that he or she will embrace. Third, in relation to the marriage law for the marriage of Indonesian citizens who come from different religious background in the Netherlands and in reference to the Article 56 Verse (1) of the Law of Marriage, the mixed-marriage might potentially be a polemic. As a result, in the future there should be legal reconstruction that involves public aspiration toward the marriage between spouses from different religious background. This research recommends that in the legal reconstruction, it is necessary to stipulate the recognition of marriage records that have been legally performed in other countries. The legal reconstruction is necessary in order to meet the principle of legal effectiveness; however, the legal reconstruction should be performed by considering the law that meets the principles of philosophical, sociological, and juridical standardization.

In the reality, there are several Indonesian citizens who do not register their marriage due to certain reasons. In general, these Indonesian citizens do not experience the negative impacts from the decision to not registering their marriage. Such situation is different from the

conditions in Indonesia; in Indonesia, the decision to not registering the marriage might result in detrimental the wife for example: not being able to take care of the pension fund, not being able to demand the inheritance, not being able to prosecute the act of domestic violence, not having access to banking matters, not having stable legal status, and alike. Such differences have been caused by the fact that the Dutch Government has issued the policies that are very beneficial for the citizens who live in the country; for example, there is a social security program for the citizens who have been unemployed and there is allowance for the children who have not reached the age of 18 years old. In addition, there is also educational subsidy for the citizens until the age of 25 years old. The Dutch law also admits the status of the spouses who have been living together without bond of marriage (partner); as a result, these spouses attain the rights and the protections from the government similarly to the officially married spouse. Therefore, if these partners have children then their children will still be provided with social security from the Dutch government.

Then, during the study there are several limitations that have been found in relation to the sample gathering activities since there are not many studies that have been conducted toward the case of marriage between non-Muslim Indonesian citizens or the case of marriage between Muslim and non-Muslim Indonesian citizens. The information in relation to the two kinds of marriage, both in terms of process and in terms of impacts, have still been minimum. Therefore, through the present study it is recommended that those cases might be considered for further analysis.

ACKNOWLEDGEMENT

The researchers would like to express their greatest gratitude to Mr. June Kuncoro Hadiningrat, Mr. Nur Hasyim Subadi, and Mr. Muharam Marzuki for their efforts in assisting the success of this study.

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